

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ROBBIE GRANT,

Plaintiff,

v.

WESTCARE, INC.,

Defendant.

3:14-cv-00620-MMD-WGC

**REPORT & RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff filed his application to proceed in forma pauperis (Doc. # 1)<sup>1</sup> and pro se complaint (Doc. # 1-1) against defendant Westcare, Inc. on December 2, 2014.<sup>2</sup>

On February 6, 2015, the court granted his application to proceed in forma pauperis, but dismissed his complaint with leave to amend. (Doc. # 16.) Plaintiff's complaint was difficult to decipher, but it mentioned defamatory statements made in the context of the discharge of his employment, and included vague references to at-will employee rights, and a request to remain in his residence as his housing arrangement was part of his employment package. (Doc. # 1-1.) In its screening order, the court noted that it did not appear it had jurisdiction over the action as alleged. (Doc. # 16 at 4.) In addition, Plaintiff's pleading did not include allegations amounting to a cognizable claim. (*Id.* at 5.) He did not include allegations that Westcare was acting under color of state law, or that he was deprived of any federal constitutional or statutory right, so as to

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<sup>1</sup> Refers to court's docket number.

<sup>2</sup> WestCare Nevada, Inc. (erroneously named as Westcare, Inc.) filed a motion to dismiss (Doc. # 4) even though the complaint had not been screened and formally filed. The motion to dismiss was ultimately denied as moot in light of the court's screening order dismissing the complaint with leave to amend. (*See* Doc. # 16.)

1 give rise to a claim under 42 U.S.C. § 1983. Moreover, his complaint only referenced Nevada's  
2 defamation law. (*Id.*) For these reasons the complaint was filed (Doc. # 17), but dismissed.

3 The dismissal of the complaint was with leave to amend because Plaintiff referenced his  
4 termination and it was *possible* that he could assert a claim arising under federal employment  
5 law. Plaintiff was given thirty days to file an amended complaint. (*Id.* at 5-6.) He was cautioned  
6 that a failure to file the amended complaint within the thirty days might result in dismissal of his  
7 action. (*Id.* at 6.)

8 On February 27, 2015, Plaintiff filed a document titled "Rescind and close request of  
9 Original Petition dated 12/2/14." (Doc. # 19.) In that document, he stated: "This Request for  
10 withdrawal of the original Petition and all documented Instruments filed in this Court is hereby  
11 formally Rescinded without influence." (*Id.*)

12 It appeared as though Plaintiff sought a voluntary dismissal of this action by virtue of his  
13 February 27, 2015 filing, but the court set the matter for a hearing on March 4, 2015, to confirm  
14 this was the case. (*See* Doc. # 20, Mar. 4, 2015 Minutes.)

15 Plaintiff did not file an amended complaint within the thirty-day deadline, nor did he  
16 appear for the March 4, 2015 hearing. Counsel for WestCare Nevada, Inc. did appear at the  
17 hearing and advised the court that Plaintiff had filed an action in the Second Judicial District  
18 Court in and for the County of Washoe, State of Nevada (Case No. CV14-02492) that involves  
19 similar allegations as those asserted here.

20 In light of Plaintiff's failure to file an amended complaint within the thirty days  
21 proscribed in the screening order, and failure to appear at the March 18, 2015 hearing, the court  
22 recommends that this action be **DISMISSED WITHOUT PREJUDICE** and that the case be  
23 administratively closed.

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1 The parties should be aware of the following:

2 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
3 this Report and Recommendation within fourteen days of receipt. These objections should be  
4 titled "Objections to Magistrate Judge's Report and Recommendation" and should be  
5 accompanied by points and authorities for consideration by the district judge.

6 2. That this Report and Recommendation is not an appealable order and that any notice of  
7 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
8 until entry of judgment by the district court.

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10 DATED: March 18, 2015.

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12 WILLIAM G. COBB  
13 UNITED STATES MAGISTRATE JUDGE  
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